

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Friday, May 13, 2011

4:17 p.m.

Location

Evans House

1100 West Washington

Phoenix, Arizona 85007

Attending

Colleen C. Mathis, Chair

Jose M. Herrera, Vice Chair

Scott Day Freeman, Vice Chair

Linda C. McNulty, Commissioner

Richard P. Stertz, Commissioner

Raymond F. Bladine, Executive Director

Kristina Gomez, Deputy Executive Director

Buck Forst, Information Technology Specialist

James E. Barton II, Assistant Attorney General

REPORTED BY:

Marty Herder, CCR

Certified Court Reporter

CCR No. 50162

Phoenix, Arizona

May 13, 2011

4:17 p.m.

(Whereupon, Chairperson Mathis, Commissioner Stertz, and Commissioner McNulty appear via videoconference.)

P R O C E E D I N G S

(Whereupon, the public session commenced.)

CHAIRPERSON MATHIS: So, it's 4:17 p.m. -- I mean, yes, p.m., and I'd like to call this meeting back to order from recess.

This is the Arizona Independent Redistricting Commission.

Today is Friday, May 13th. And I will go ahead and take a roll call since it's been such a long period since our recess, but I can see you guys.

Vice Chair Freeman?

VICE CHAIR FREEMAN: Here.

CHAIRPERSON MATHIS: Vice Chair Herrera?

COMMISSIONER HERRERA: Here.

CHAIRPERSON MATHIS: Commissioner Stertz?

COMMISSIONER STERTZ: Here.

CHAIRPERSON MATHIS: Commissioner McNulty?

1 COMMISSIONER McNULTY: Here.

2 CHAIRPERSON MATHIS: We have a quorum.

3 And I believe, I can't see if there's public
4 there, but I see our executive director, Ray Bladine.

5 And would you mind, Ray, saying who else is over
6 there on your end?

7 RAY BLADINE: We have from the purchase --
8 procurement office, we have Jean Clark. And, I am sorry, I
9 don't know her assistant's name.

10 Then we do have the public, members of the public,
11 about 10 or 12.

12 We have several reporters.

13 Would you like me to try to detail that more?

14 CHAIRPERSON MATHIS: No, that's okay. Thank you.

15 I just wanted to make sure we did have procurement
16 here too.

17 RAY BLADINE: Yes.

18 CHAIRPERSON MATHIS: Thank you, Jean Clark, for
19 being with us today.

20 We are on agenda item seven from our meeting, and
21 this is a continuation of our discussion of responses to the
22 RFP for legal counsel.

23 We had a really great day yesterday interviewing
24 six candidates, and went into executive session to begin
25 discussions about our thoughts on those six.

1 And I'd like to entertain a motion to go back into
2 executive session to continue our discussions.

3 COMMISSIONER STERTZ: So moved.

4 COMMISSIONER FREEMAN: Second.

5 CHAIRPERSON MATHIS: Second? Okay.

6 All in favor?

7 ("Aye.")

8 CHAIRPERSON MATHIS: Any opposed?

9 (No oral response.)

10 CHAIRPERSON MATHIS: Okay. We will go into
11 executive session.

12 The time is 4:19 p.m.

13 COMMISSIONER HERRERA: Colleen, we'll have to wait
14 about a minute or so for the members of the public to clear
15 out.

16 CHAIRPERSON MATHIS: Will do. You can let me
17 know.

18 COMMISSIONER HERRERA: I will let you know.

19 (Whereupon the public session recessed, and
20 executive session ensued.)

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24 (Whereupon, the public session resumes.)

25 CHAIRPERSON MATHIS: It's 5:33 p.m. We'll enter

1 back into public session.

2 Thank you, public, for attending today's late
3 Friday afternoon meeting.

4 We just had a good discussion that continued from
5 yesterday regarding the six firms that were short listed to
6 provide legal services, legal counsel to the Commission.

7 And I want to thank all the commissioners for
8 their input, because it's all valid and good.

9 And we were really fortunate in that we have a
10 number of great responders, and they all did a great job
11 yesterday in answering our questions and helped us all to
12 formulate our opinions.

13 And I thank the firms and the responders, all of
14 them, for being interested in serving us. And we all think
15 you're great.

16 So we're very lucky. I said this to the
17 commissioners, that I think it was an embarrassment of
18 riches, that I really am impressed with the level of
19 credentials that these people that responded.

20 With that said, if there is no objection, I
21 propose that the Commission select Ballard Spahr and Osborn
22 Maledon to serve as its counsel.

23 COMMISSIONER FREEMAN: I object,
24 Madam Commissioner.

25 COMMISSIONER HERRERA: Can you object to the --

1 Madam Chair, can you add the part that we would be allowing
2 or giving SPO permission to negotiate the hourly rates with
3 the two that have been nominated?

4 CHAIRPERSON MATHIS: That's true.

5 I should probably amend that motion to say that if
6 there is no objection, I propose that the Commission select
7 Ballard Spahr and Osborn Maledon to serve as its legal
8 counsel and to appoint a procurement officer from state
9 procurement to negotiate or harmonize the rates between the
10 two firms.

11 Thank you, Mr. Herrera, for helping me with that.

12 COMMISSIONER HERRERA: I second that motion -- or
13 I make that motion.

14 CHAIRPERSON MATHIS: Well, so, it sounded like
15 there was an objection from Mr. Freeman.

16 COMMISSIONER FREEMAN: Yes.

17 CHAIRPERSON MATHIS: Okay. So then I will
18 entertain a motion to select Ballard Spahr and Osborn
19 Maledon to serve as legal counsel to the Commission and
20 appoint a procurement officer to serve as our negotiator to
21 help harmonize the rates between the two firms.

22 COMMISSIONER HERRERA: I make that motion.

23 COMMISSIONER McNULTY: I second it.

24 CHAIRPERSON MATHIS: Any discussion?

25 COMMISSIONER FREEMAN: Madam Chair?

1 CHAIRPERSON MATHIS: Yes, Mr. Freeman.

2 COMMISSIONER FREEMAN: Madam Chair, if this
3 Commission had been presented with proposed counsel that was
4 purely independent, non-partisan, without any partisan
5 taint, we might be in a different situation.

6 But I think we would agree that all of the counsel
7 that we interviewed, all the embarrassment of riches that we
8 had before us, came with them certain partisan taint.

9 And I think looking at the -- what the last
10 Commission did is the road to go.

11 As a Republican, I am willing to give deference to
12 and accept as counsel for the Democrats, the Democrat
13 counsel, any of the three interviewees so long as I would be
14 given the same deference on my part.

15 My pick for counsel for Republican counsel is Lisa
16 Hauser and the Gammage Burnham firm.

17 She is in my view beyond dispute the most
18 qualified candidate of the six we interviewed, with direct
19 first chair experience on every issue we are likely to face.

20 Like I said, I would accept any of the three
21 Democratic interviewees despite reservations I may have
22 about them and their background and their partisanship.

23 I don't think this is about partisanship. I
24 think, like I said, absent a truly independent counsel
25 presented with us, this is about getting, as the first

1 Commission did, the best legal counsel among the Republicans
2 that the Republicans are comfortable with and as well
3 qualified and the same thing for the Democrats and their
4 counsel.

5 I think with the motion that's been put before the
6 Commission, we struck a highly partisan tone and there's a
7 highly partisan objective here.

8 Despite statements of praise about all the
9 candidates yesterday made in public session, I think what we
10 end up with is a result where the Democratic members of the
11 Commission get to exercise a veto over who the counsel at
12 least I would choose as Republican counsel.

13 In so doing they unfortunately put the chair in an
14 untenable position, one that I would -- one where the chair
15 is being forced to align with one side or another when it
16 really isn't necessary.

17 We could proceed in a fair manner and allow the
18 Republicans to pick their counsel and the Democrats to pick
19 theirs, but now we're faced with the result where the
20 chairman's going to have to decide -- side with one side or
21 another in public session.

22 I think that could end up being harmful to this
23 Commission as we move forward, and I don't want to see that
24 happen.

25 Like you said, we had an embarrassment of riches

1 before us.

2 I also heard one of my Democratic colleagues on
3 the Commission yesterday state, repeatedly I believe, at
4 least once to my recollection, that he would be comfortable
5 with any of the Republican candidates, at least in public
6 session.

7 So I'm going to vote no on this motion.

8 And I wish we could proceed as outlined.

9 And I know we have really worked hard to try to
10 resolve the issue, and I appreciate all the other comments
11 and efforts by my fellow commissioners on this.

12 CHAIRPERSON MATHIS: Thank you, Mr. Freeman.

13 Other comments from anyone, any other discussion?

14 COMMISSIONER McNULTY: Madam Chair.

15 CHAIRPERSON MATHIS: Ms. McNulty.

16 COMMISSIONER McNULTY: I would like to say that I
17 think that the combination of Ballard Spahr and Osborn
18 Maledon presents us with the highest and best expertise and
19 ability to provide us with their impartial and balanced
20 representation.

21 And I think that we are not just Democrats and
22 Republicans on this Commission. We are two Democrats, two
23 Republicans, one Independent. We each have a vote. And
24 we're each exercising that vote in front of you.

25 COMMISSIONER HERRERA: Madam Chair?

1 CHAIRPERSON MATHIS: Yes, Mr. Herrera.

2 COMMISSIONER HERRERA: For the record, and I don't
3 know if the public has access to this information, which was
4 our evaluation summary based on the RFP or the responses to
5 the RFP. And there were two firms that were clearly on top.
6 They were Ballard Spahr and followed by Osborn Maledon.

7 So I think we're being consistent.

8 I am not getting my number one choice, so I -- and
9 I think Ms. McNulty would say the same thing -- or I'm not
10 going to speak on her behalf.

11 My number one choice was Michael Mandell, for the
12 record.

13 But I'm willing to negotiate and sacrifice my
14 number one choice for someone who is equally as competent
15 but not my number one choice. That would be Osborn Maledon.

16 COMMISSIONER STERTZ: Madam Chair.

17 CHAIRPERSON MATHIS: Mr. Stertz.

18 COMMISSIONER STERTZ: I will I go ahead and offer
19 a substitute motion with the same terms and conditions, and
20 offer a motion where Gammage and Burnham and Mandell Law
21 Firm are the two firms of selection for the Commission.

22 COMMISSIONER HERRERA: Madam Chair, I don't think
23 you can offer an alternate motion when there's an actual
24 motion on the table seconded. We need to vote on that one
25 motion before we entertain a second motion.

1 This is not a unanimous consent motion, let's
2 remind the Commission. This is a motion that was -- that is
3 a vote, a roll call vote, not a unanimous consent.

4 So unless I'm wrong, you cannot do that,
5 Commissioner Stertz.

6 COMMISSIONER STERTZ: A substitute motion can be
7 made. It has to be made by --

8 COMMISSIONER HERRERA: Mr. Stertz, we have our
9 attorney who is wanting to speak.

10 JAMES BARTON: Commissioners, this is Jim Barton.
11 Commissioner Stertz is right.

12 He can offer, he can offer -- he can move to amend
13 the motion, and then you can have a second on that and vote
14 on his amendment. It's not necessarily a countermotion. He
15 can just move to amend the motion. If he gets a second,
16 then you can vote on it. And if he prevails, then the
17 motion is amended. And if he doesn't, then the motion
18 stands as is.

19 COMMISSIONER HERRERA: Okay.

20 Mr. Stertz, did you hear that?

21 COMMISSIONER STERTZ: So what you're suggesting is
22 that I offer not a substitute motion but an amendment to the
23 motion, substituting Gammage Burnham for Ballard Spahr, and
24 Mandell Law Firm for Osborn Maledon.

25 COMMISSIONER HERRERA: Is that your amendment?

1 COMMISSIONER STERTZ: My offer of amendment, yes.

2 COMMISSIONER FREEMAN: I'll second that.

3 COMMISSIONER HERRERA: So it's been seconded.

4 Ms. Chair, it's been seconded. Should we vote?

5 CHAIRPERSON MATHIS: Any discussion?

6 COMMISSIONER HERRERA: None from me.

7 CHAIRPERSON MATHIS: I would just like to say that
8 we have, from the very beginning, all five of us said that
9 whatever counsel we choose, whether it was the AG office or
10 one firm or two firms, that they represent all of us. And
11 that there is no -- I think all of us would agree that we
12 have all said that and believe that.

13 I would like it if we could all obviously get
14 behind the two firms that have been stated by me in my
15 original suggestion.

16 But, I also believe that the Independent voice
17 does need to be heard in this.

18 If there were a Legislative caucus among -- then
19 candidates Republicans and Democrats and pure partisan
20 representation of those two parties makes total sense. But
21 the way this proposition and amendment to the Constitution
22 is stated, you guys are stuck with me as the Independent.

23 And, there is a hugely growing group of
24 Independents in this state, the fastest growing group, as we
25 all know. And I think their voice needs to be heard.

1 And I think public perception is important, and I
2 think that they strongly value bipartisanship behavior.

3 And I think the two firms that I mentioned have
4 great track records in those regards, the lead counsel for
5 those two firms that are being proposed to us.

6 And for that reason I continue to stick by my
7 original choices.

8 So I'm trying to figure out how we now move with
9 this -- we've got a substitute --

10 COMMISSIONER HERRERA: Madam Chair, I think the
11 attorney, Mr. Barton, was clear that Commissioner Stertz can
12 amend the motion, and it's been seconded by
13 Commissioner Freeman --

14 JAMES BARTON: I'm having difficulty hearing on
15 the speaker phone.

16 Perhaps if they could take the phone off of
17 speaker and just relay questions to me, that might be
18 easier.

19 RAY BLADINE: Jim, I think we all at this end
20 understand that all he has to do is make an amendment to the
21 motion that was seconded. You would vote on that first. If
22 that fails, then you vote on the second.

23 COMMISSIONER HERRERA: On the original.

24 RAY BLADINE: I don't think that Colleen heard
25 that.

1 CHAIRPERSON MATHIS: Yeah, I can't hear Jim at
2 all.

3 RAY BLADINE: I did say what you said correctly?

4 JAMES BARTON: You did, yes.

5 CHAIRPERSON MATHIS: Okay. Great.

6 I could hear Mr. Bladine.

7 So we need to vote -- unless there's more
8 discussion, we need to vote on the amended motion that
9 Mr. Stertz gave to substitute Gammage and Burnham for
10 Ballard Spahr and Mandell Law Firm for Osborn Maledon.

11 Is that correct?

12 COMMISSIONER HERRERA: So the amendment would be
13 voting for Gammage and Burnham and Michael Mandell.

14 CHAIRPERSON MATHIS: Correct.

15 COMMISSIONER HERRERA: And it's been seconded.

16 CHAIRPERSON MATHIS: It was seconded. Mr. Stertz
17 made the amended motion, and Mr. Freeman seconded it.

18 COMMISSIONER HERRERA: Correct.

19 CHAIRPERSON MATHIS: Okay. Any other discussion?

20 COMMISSIONER HERRERA: No.

21 CHAIRPERSON MATHIS: All in favor?

22 COMMISSIONER FREEMAN: Aye.

23 COMMISSIONER STERTZ: Aye.

24 CHAIRPERSON MATHIS: So, and we'll need to do a
25 roll call vote on this obviously since we're in different

1 places and it's hard to grasp.

2 Any opposed?

3 COMMISSIONER HERRERA: Aye.

4 COMMISSIONER McNULTY: Aye.

5 CHAIRPERSON MATHIS: And aye.

6 So we have, if I heard it correctly, two for the
7 amended motion. That was Commissioner Stertz and

8 Vice Chairman Freeman. And three opposed,

9 Vice Chair Herrera, Commissioner McNulty, Chairman Mathis.

10 So the motion fails -- the amended motion fails,
11 I'm sorry.

12 Thank you.

13 So we have another motion that's out there, the
14 original one that has been seconded.

15 Any other discussion?

16 COMMISSIONER HERRERA: None.

17 CHAIRPERSON MATHIS: Okay.

18 All in favor?

19 COMMISSIONER HERRERA: Aye.

20 CHAIRPERSON MATHIS: Aye.

21 COMMISSIONER McNULTY: Aye.

22 CHAIRPERSON MATHIS: Any opposed?

23 COMMISSIONER FREEMAN: Nay.

24 COMMISSIONER STERTZ: Nay.

25 COMMISSIONER HERRERA: Commission McNulty, did you

1 vote?

2 We couldn't hear Commission McNulty.

3 COMMISSIONER McNULTY: I voted aye.

4 COMMISSIONER HERRERA: Thank you.

5 CHAIRPERSON MATHIS: So the vote stands with
6 Vice Chair Herrera, Commissioner McNulty, Chairman Mathis
7 voting aye, and Commissioner Freeman -- or
8 Vice Chair Freeman and Commissioner Stertz voting no.

9 And the motion carries, which is we will be
10 selecting Ballard Spahr and Osborn Maledon to serve as legal
11 counsel to this Commission and we are giving the authority
12 to the state procurement officer to harmonize rates between
13 those two firms.

14 COMMISSIONER HERRERA: Well said.

15 CHAIRPERSON MATHIS: Does anyone have any other
16 things that they'd like to say?

17 COMMISSIONER FREEMAN: Madam Chair.

18 CHAIRPERSON MATHIS: Mr. Freeman.

19 COMMISSIONER FREEMAN: I -- perhaps not, because I
20 think we've moved on that agenda.

21 I was thinking out loud of when our next hearing
22 would be and whether we had confirmed it would be on the
23 26th or in the following week.

24 CHAIRPERSON MATHIS: Good question.

25 We have set a meeting for May 26th, in Phoenix,

1 9:30 in the morning, which was our plan a couple weeks ago.

2 We probably should discuss now if we're done with
3 this agenda item seven, sounds like we are, unless anyone --
4 I'm sorry, before we move on, let me -- Ms. McNulty would
5 like to say something.

6 COMMISSIONER McNULTY: I just have a question
7 about whether the procurement officer will contact the two
8 firms or whether Mr. Bladine will.

9 RAY BLADINE: Will you contact them.

10 JEAN CLARK: Yes, we will contact them.

11 We would like to wait until Monday, or do you want
12 them contacted now?

13 COMMISSIONER HERRERA: Commissioner Mathis, Jean
14 Clark said she would like to contact them on Monday, if
15 that's okay.

16 JEAN CLARK: Unless you would like it tonight, if
17 I can get ahold of them, but I. . .

18 RAY BLADINE: I can do that. I have a couple
19 asking to be called.

20 CHAIRPERSON MATHIS: I would like if you could
21 contact them tonight.

22 JEAN CLARK: We'll do it tonight. We'll do it
23 tonight.

24 CHAIRPERSON MATHIS: Okay.

25 COMMISSIONER HERRERA: Jean Clark said that she

1 will do it tonight.

2 CHAIRPERSON MATHIS: Oh, good. Okay.

3 Thank you, Jean. I appreciate it.

4 Any other comments before we leave agenda item
5 seven?

6 COMMISSIONER HERRERA: Madam Chair.

7 CHAIRPERSON MATHIS: Yes, Mr. Herrera.

8 COMMISSIONER HERRERA: I just wanted to say this
9 was not an easy process, and I don't think anybody got what
10 they wanted exactly, but that's what it means when you
11 negotiate. You're not going to be happy with what you get,
12 and we need to respect the decision that was made. It was
13 3-2, the majority.

14 And, like I said, it wasn't easy, but I think it
15 was the right decision. And I sacrificed, and so did -- we
16 all did.

17 So I appreciated the vote, and let's move forward.

18 CHAIRPERSON MATHIS: Thank you, Mr. Herrera.

19 Any other comments from anyone?

20 COMMISSIONER FREEMAN: Madam Chair.

21 CHAIRPERSON MATHIS: Mr. Freeman.

22 COMMISSIONER FREEMAN: I disagree with what
23 Chairman Herrera said. But I think -- why don't we adjourn.

24 CHAIRPERSON MATHIS: But what?

25 COMMISSIONER FREEMAN: I was just suggesting let's

1 adjourn.

2 CHAIRPERSON MATHIS: You don't want to hang out
3 longer?

4 COMMISSIONER HERRERA: Well, let's decide on the
5 meeting. We will be meeting on the 26th or will we not?

6 CHAIRPERSON MATHIS: The 26th is Thursday, so next
7 week we know that -- I know Mr. Bladine and I both have
8 conflicts with next week, so our next meeting is scheduled
9 for Thursday of the following week.

10 I hope we're okay with leaving as it is right now.

11 Do we expect to get the responses to the mapping
12 services RFP back sometime that week? Tuesday, I believe.
13 So we probably won't have much time to review it, you know,
14 before Thursday's meeting.

15 So we could move that meeting out until we have
16 time after Memorial Day weekend to actually review
17 responses.

18 But I'm happy with leaving it on the 26th too.
19 It's up the commissioners.

20 COMMISSIONER HERRERA: Madam Chair, we could leave
21 it as is and maybe change it later on. We do have plenty of
22 time.

23 So I don't think we're going to come up with a
24 date now, but let's keep the date. If it doesn't work later
25 on, as long as we have 48-hour notice, we can make the

1 change.

2 CHAIRPERSON MATHIS: Okay. Great. That sounds
3 good to me.

4 Okay. Any other comments?

5 And the tabled agenda items from yesterday will
6 remain tabled and will carry forward to whenever we meet
7 next.

8 And I appreciate everyone's time this evening.

9 And it's now 5:54 p.m., and this meeting is
10 adjourned.

11 COMMISSIONER HERRERA: Thank you.

12 CHAIRPERSON MATHIS: Thank you.

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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing meeting was held before me, Marty Herder, a Certified Court Reporter, CCR No. 50162, State of Arizona; that the foregoing 20 pages constitute a true and accurate transcript of all proceedings had upon the public session of said meeting, all done to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome hereof.

DATED at Chandler, Arizona, this 22nd day of May, 2011.

Marty Herder, CCR
Certified Court Reporter
Certificate No. 50162
AZ Litigation Support Court Reporters